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TAGS: PHUM, PREL, UNHRC-1

SUBJECT: WORKING GROUP ON ARBITRARY DETENTION: RESPONSE TO
LETTER REGARDING "SECRET PRISONS" UNDER THE JURISDICTION
OF THE UNITED STATES

REF: A. GENEVA 3039

B. GENEVA 803

1. Mission is requested to convey to Ms. Zerrougui, Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the text of the letter in paragraph 3 below. This letter responds to the Chairperson's correspondence of December 8, 2005 G/SO218/2 and her letter of September 7, 2006, which included Opinion No. 29/2006 of the Working Group on Arbitrary Detention "concerning the detention of 28 persons in supposed secret prisons, or 'black sites' outside territories under the jurisdiction of the United States of America." The Chairperson requested information on the alleged "secret prisons" and noted that the Working Group considered the case at the Working Groups 45th session, between May 8 and 12, 2006.

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2. This letter should be delivered under cover of a diplomatic note. The text of this letter will also be sent to post by e-mail. This communication is in reference to number 41 on the Geneva 2005 log, and is related to #27 and #33 on the 2006 log.

3. Begin Text:

Ms. Leila Zerrougi
Chairperson-Rapporteur
Working Group on Arbitrary Detention

Dear Ms. Zerrougui:

The Government of the United States is in receipt of your letter dated December 8, 2005, OHCHR note G/S0218/2 dated August 7, 2006, and your letter of September 7, 2006, which enclosed Opinion No. 29/2006 of the Working Group on Arbitrary Detention relating to a communication received by the Working Group "concerning the detention of 28 persons in supposed secret prisons or 'black sites' outside territories under the jurisdiction of the United States of America."

The United States respectfully notes that it does not believe that the issues discussed in these documents fall within the mandate of the Working Group. As recently confirmed by the U.S. Supreme Court in *Hamdan v. Rumsfeld*, the law of armed conflict governs the armed conflict with al Qaeda. Specifically, the Supreme Court held that Common Article 3 of the Geneva Conventions applies to the armed conflict with al Qaeda.

Despite the fact that this matter is outside the Working Group's competence, we would further note that the recent report the United States submitted to the Committee Against Torture and the additional materials the United States provided to the Committee when it appeared before it in May 2006 addressed concerns similar to those raised in your communication. These documents are attached and are also available at www.usmission.ch.

We would also like to bring to the Working Group's attention a speech by President Bush on September 6, 2006 discussing the recent movement of fourteen detainees, many of whom are referred to in the above-referenced documents, from classified locations to Department of Defense custody at the U.S. naval base at Guantanamo Bay, Cuba. The International Committee of the Red Cross was notified and has had access to these detainees at Guantanamo.

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For the Working Group,s convenience a copy of President Bush,s speech is attached and also available at www.whitehouse.gov/news/releases/2006/09/20060906-3.html.

(Complimentary closing)

Sincerely,

Warren W. Tichenor
Ambassador

Attachments: As stated

End Text.

4. Department appreciates Mission's assistance with this matter.

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